

**Presentation
by the
Ontario Federation of Labour**

to

**The Standing Committee on Government
Agencies of the Legislative Assembly of Ontario
Examining the Operation of the
Human Rights Tribunal of Ontario**

February 9, 2009

Thank you for allowing me this opportunity to speak on behalf of the Ontario Federation of Labour and its affiliates as well as community organizations like the African Canadian Legal Clinic, the Metro Toronto Chinese and Southeast Asian Legal Clinic, and the Canadian Arab Federation, and the Accessibility for Ontarians with Disabilities Alliance (AODA). I understand that the Alliance will make their own presentation to the Standing Committee.

Human rights are fundamental to any democratic society, and the struggle for these rights has been ongoing for generations. After 1948 when the United Nations issued its Declaration of Human Rights, human rights statutes became more established in Canada within both federal and provincial governments.

As part of this process of change and with the ongoing persistent lobbying of community and union activists like Stan Grizzle, Bromley Armstrong, Dan Hill and Alan Borovoy, a series of statutes and policies were enacted to promote recognition of diverse groups and a more inclusive policy. Thus, the creation of the publically-funded Ontario human rights system in 1962

which included the Ontario Human Rights Commission and the Ontario Human Rights Tribunal. Its mandate was to enforce the Ontario Human Rights Code.

On December 4, 2006, the Ontario Government passed Bill 107, an *Act to Amend the Human Rights Code*. It was received with mixed reactions by diverse human rights advocates and organizations. All agreed that the Ontario human rights system required reform, but there was no consensus on the practical implications of the changes proposed under Bill 107.

Supporters of Bill 107 believed the changes would lead to a more efficient human rights system, where complainants would have “direct access” to a Human Rights Tribunal. In their view, Bill 107 would strengthen and optimize the Human Rights Commission, and not weaken it.

Our group, however, questioned the assumption of “fair access” under the new system, and argued that the changes brought about by Bill 107 would weaken the Ontario human rights system.

For instance, under Bill 107, victims of discrimination are no longer safeguarded by the free, expert services of the Human Rights Commission.

This is because complaints are no longer publicly investigated and prosecuted without cost to the victim. Rather, they now have to pay for legal counsel in order to have meaningful access to a system that was intended to be universal. In this scenario, those with meager financial resources are forced to choose between seeking justice – and financial survival.

Sadly, we know all too well that those communities most affected by discrimination are also disproportionately affected by poverty. Over half of discrimination complaints are on the grounds of disability. Almost another half involves issues of racialization, citizenship, sex, gender identity, family status, pregnancy, and sexual orientation.

While Bill 107 may allow complaints to be made directly to a Tribunal, only those with financial means will be able to do so.

Although Bill 107 does not exclude the Commission from the complaints process, it has reduced its staff from 200 to 60 and severely constrained the Commission's ability to meet the needs of those it is supposed to serve.

In effect, Bill 107 has privatized Ontario's human rights system.

Not only did Bill 107 eliminate the free investigative services of the Commission, it also revised the administrative and operative functions of the Commission and eliminated staff. So in theory, the Commission maintains its ability to bring forward a complaint on its own or intervene in individual complaints, but the reality is that there is simply not enough staffing and infrastructure to do so. And despite fewer resources, the Commission is still charged with the following mandate:

- To take proactive measures to address systemic discrimination through public education, promotion and public advocacy, research and analysis.
- To examine, review and make recommendations on any new statute or regulation, and any program or policy that the Commission feels is inconsistent with the intent of human rights legislation.

- To review discrimination problems that may arise and encourage and coordinate plans, programs and activities to reduce or prevent such problems.
- To promote, assist and encourage groups or persons to engage in programs to alleviate tensions and conflicts based upon identification by a prohibited ground of discrimination.

But with a staff of 60 serving all of Ontario, how can the Commission possibly fulfill these crucial responsibilities?

In theory, Bill 107 established a Human Rights Legal Support Centre independent from, but accountable to, the Government of Ontario. The purpose of the Centre is to provide support services, including legal services, with respect to applications under the Code. The Centre's services are supposed to include advice and assistance, legal and otherwise, with respect to the infringement of rights under Part 1 of the Code. And these services are supposed to be provided throughout the province.

Presently, there is only one single “Legal Support Centre” serving the needs of all Ontarians. Although we are aware that the Legal Support Centre has set up some resources in locations outside of Toronto, many human rights advocates are skeptical that these services are adequate, especially for those outside the Greater Toronto Area, where the Centre is located.

In fact, anecdotal evidence shows that Ontarians are still seeking assistance from legal clinics in filing complaints. Some of the clinics are sending people back to the Legal Support Centre. Others are trying to continue assisting clients whose first language is not English. The full-time Human Rights Director of my own organization – the Ontario Federation of Labour – continues to assist both union and non-union workers with complaints, simply because the initial paperwork is overwhelming and a clear barrier to many individuals – especially for newcomers and those for whom English is a second or third language. It should be noted that the Centre, such as it is, only opened its doors on June 30 of last year – a mere seven months ago.

Similarly, Bill 107 was also supposed to establish new Anti-Racism and Disability Rights Secretariats. Both Secretariats were to undertake, direct and encourage research into discriminatory practices on the basis of racism and disability. They were supposed to facilitate the development and provision of public information and education programs intended to reduce and eliminate discriminatory practices in those areas. To date, neither Secretariat is up and running. This delay calls into question the sincerity of the Ontario government's commitment to equality.

Our goal as human rights advocates is to make sure that Ontario's Human Rights system is inclusive, accessible and works effectively for all victims of discrimination and harassment. But with inadequate statistical data, it is difficult to assess the effectiveness of the system, and determine whether it is fulfilling its mandate.

And while we appreciate the information that we have received from Kathy Laird, the Human Rights Legal Support Centre and the Human Rights Commission staff who assisted us with answering some of our queries, our legitimate concerns persist:

- Does the system address the financial and power imbalance between individual complainants with limited resources and well-funded employers in both the public and private sectors?
- What were the outcomes of the many cases that were filed with the Human Rights Commission prior to the enactment of Bill 107?
- Are all complainants in a position to access the independent legal counsel that this government promised, in a timely and expedient manner even if there is no income testing?
- Is the new system too difficult for the average citizen to access and navigate on their own without the assistance of a lawyer?
- Are complainants giving up because of red tape that causes confusion in the complaints process?
- Are cases being filed or abandoned because of delays due to inadequate staffing, inadequate funding or other general limits on accessibility?

- Are complainants receiving funding for expert witnesses?
- Is geography a barrier to those seeking legal support through the Legal Support Centre, especially for those who live outside the Greater Toronto Area where the Centre is presently located?

It is widely acknowledged that Bill 107 weakened the Disability Access Legislation that the AODA and others lobbied the government to implement. Premier Dalton McGuinty promised to implement a disability law with effective enforcement through the Human Rights Commission process. Yet, Bill 107 removed the Human Rights Commission's enforcement abilities, stripped its entire investigation staff and cut its legal department in half. What is now being done about enforcement?

The Accessibility for Ontarians with Disabilities Alliance, the African Canadian Legal Clinic, the Metro Toronto Chinese and Southeast Asian Legal Clinic, the Canadian Arab Federation and the Ontario Federation of Labour, its affiliates and labour councils worked together to challenge the pernicious aspects of Bill 107. Together, we lobbied, attended meetings and made numerous presentations to this government.

We agreed that Ontario's human rights system needed revamping. But we insisted that any changes must be brought about through meaningful and inclusive input from the communities, organizations and unions that represent victims of discrimination on a daily basis.

Instead, Ontario's new Human Rights Tribunal has set up a new set of complicated rules that are difficult for unrepresented persons to navigate. There is now a new, longer, more detailed application form that poses a challenge even to specialists. Incorrectly completing a form can jeopardize the viability of a case, making legal counsel a prerequisite in practice, if not in law. Far from improving access, these and other changes have created new barriers and restrict access to those seeking basic fairness in their lives.

Despite these obstacles, we continue to encourage victims of discrimination to access the system. But, in the absence of government leadership, we hope that the public and the media assist us in monitoring the effectiveness – or ineffectiveness – of the new system.

Premier Dalton McGuinty promised that he would deliver a fair, inclusive and accessible human rights system for all Ontarians. But as it stands, the system falls woefully short of this goal. We urge the Ontario government to take meaningful action to redress the issues we have raised and ensure that the system works for all those in need, regardless of their personal social or economic capital.

Respectfully submitted by the Ontario Federation of Labour and the following community organizations:

African Canadian Legal Clinic

Association of Community Legal Clinics

B'nai Brith

Canadian Arab Federation

Colour of Poverty Working Group

Metro Toronto Chinese & Southeast Asian Legal Clinic

National Anti-Racism Council of Canada

Ontario Public Service Employees Union

Parkdale Community Legal Services